IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3014 of 1991

For Approval and Signature:

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GITABEN P SHUKLA - Petitioner(s)
Versus
STATE OF GUJ & 3 - Respondent(s)

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Appearance :
Mr.Chetan Pandya for MR SV RAJU for Petitioner(s) : 1,
Ms.Krina P.Calla,learned AGP for Respondent(s) : 1,
Mr.Purvish Darji for MR SN SHELAT for Respondent(s) : 2,
RULE UNSERVED for Respondent(s) : 3,
MR BN RAVAL for Respondent(s) : 4,

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CORAM : HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 26/02/2007

ORAL JUDGMENT

1. This petition under Article 226 of the Constitution of India has been filed by the petitioner i.e. Gitaben Pushkarrai Shukla with a prayer to issue a writ of mandamus or any other writ, order or direction quashing and setting aside the Resolution No.548 dated 22-3-1971 passed by the Municipal School Board, copy of which is annexed at Annexure “F” with the petition. It is further prayed that this court should declare that the petitioner stands on the same footing as other primary School teachers, who joined the service prior to 1-1-1977. Rule was issued on 20-11-1991 and it was directed that the ad interim relief granted earlier would continue till further orders.

2. The grievance made by the petitioner, who is working as Assistant Primary Teacher in respondent No.3 School, is that the qualification of B.Ed. possessed by her is higher than the qualification of P.T.C. which is the eligibility criteria in the case of Primary School Teachers and, therefore, since the case of the petitioner stands on a much better

footing than that of the Primary School Teachers, the qualification possessed by the petitioner should be considered for the post of Primary School Teacher. The petitioner had been served with a show cause notice dated 26-3-1991, copy of which is at Annexure “C” to the petition, asking the petitioner to show cause why her services should not be terminated. The Resolution No.548 of the Municipal School Board, annexed as Annexure “F” to the petition, indicates that the qualifications which are required for Primary School Teachers do not include the qualification of B.Ed. which is possessed by the petitioner. Accordingly, the petitioner has challenged Resolution No.548 dated 22-3-1971 and the show cause notice dated 26-3-1991 by filing the present petition.

3. This petition was listed for final hearing on 23-2-2007. On that day the matter was adjourned for today, at the joint request of learned counsel for the parties.

4. Today when the case has been called out, Mr.Purvish Darji for Mr.S.N.Shelat,learned counsel for respondent No.2, has produced and submitted an

uncertified copy of the judgment of the Full Bench of this court dated 8-1-2007 in Special Civil Application No.8075 of 2001 (Sudip Tripathi and another v. State of Gujarat and others), which is taken on record. He has submitted that the case of the petitioner is negatived by the ratio laid down in this judgment, which has answered the question referred to it against the petitioner, and since the judgment of the Full Bench of this Court covers the case of the petitioner, this court may pass appropriate orders. Mr.Chetan Pandya for Mr.S.V.Raju, learned counsel for the petitioner, does not dispute this position.

5. The question which was referred to the larger Bench by a learned single Judge of this Court was “Whether a person holding the degree of Graduate B.Ed. is a trained teacher or not and can be appointed as Vidya Sahayak or a primary teacher”. The Reference came up for hearing before another Full Bench of this Court, constituted earlier, (Coram: Bhawani Singh, C.J, and J.N.Bhatt and K.R.Vyas JJ, as they then were). The Full Bench by judgment and order dated 3-12-2003, with the consensus of the learned advocates, answered the reference as under:-

> “A person holding the degree of Graduate B.Ed., is a trained teacher for standards VI and VII but is not a trained teacher for standards I to V, with regard to his/her appointment as a primary teacher Vidhya Sahayak in a Primary School.”

6. This judgment of the Full Bench was challenged before the Supreme Court in Civil Appeal No.838 of 2006, and the Supreme Court remanded the matter to the High Court for re-consideration, after hearing the appellants as well as other parties. Accordingly, the petition was heard by another Full Bench of this Court (Coram: Anil R.Dave, R.M.Doshit and J.R.Vora,JJJ), which rendered the judgment dated 8-1-2007, referred to herein-above. It would be relevant to extract the operative part of this judgment herein-below:

> “In the above circumstances, we are of the opinion that the primary teachers' training of two years' duration (as suggested by the Council) shall be the only valid qualification for appointment of teachers in primary schools : be it an appointment in regular pay scale or be it an appointment as Vidya Sahayak. The State

Government may, however, consider appointment of candidates possessing post graduate B.Ed. degree for Standards VI and VII of the primary schools but only if and after the State Government segregates Standards VI and VII from classes I to V by appropriate legislation and requisite guidelines. We answer the reference accordingly."

7. From the above narration it is clear that the instant petition must fail as the issue involved has already been decided by the Full Bench against the petitioner. In the facts and circumstances, the relief prayed for by the petitioner in the petition cannot be granted. The petition is, therefore, dismissed. Rule is discharged. The interim relief stands vacated. There shall be no orders as to costs.

(Smt.Abhilasha Kumari,J)

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